

Message Text

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ACTION EUR-12

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C O N F I D E N T I A L MOSCOW 18508

E.O. 11652: GDS
TAGS: PDIP, ASEC, PINS, UR, OS
SUBJ: SOVIET CONCERN OVER PENDING U.S. IMMUNITIES LEGISLATION

REF: (A) STATE 267266; (B) SEPT 30, 1977 LUERS-VASEV MEMCON,
(C) 76 STATE 296321

1. SUMMARY: POLITICAL COUNSELOR WAS CALLED TO FOREIGN MINISTRY
DEC 23 TO RECEIVE AN AIDE MEMOIRE PRESENTING THE SOVIET POSITION
WITH REGARD TO PASSAGE OF HR 7819. THE AIDE MEMOIRE IS A FOLLOW-
UP TO THE SOVIET EXPRESSION OF CONCERN ON SEPT 29 IN WASHINGTON
AND THE DEPT'S BRIEFING OF SOVIET OFFICERS ON NOV1. SOVIET
COUNSELOR ISAKOV PRESENTED THE DOCUMENT WITH A TONE OF SERIOUS
CONCERN THAT THE PROPOSED LEGISLATION WILL UNFAVORABLY EFFECT
SOVIET DIPLOMATIC PERSONNEL IN THE U.S. AND EXPRESSED THE HOPE
THAT THE U.S. SIDE WOULD SERIOUSLY CONSIDER "ALL POSSIBLE CONSE-
QUENCES" SHOULD SOVIET DIPLOMATS BE DISADVANTAGED RELATIVE TO U.S.
DIPLOMATS IN THE SOVIET UNION. END SUMMARY.

2. TEXT OF AIDE MEMOIRE: QUOTE. IN CONNECTION WITH THE
LEGISLATION BEING CONSIDERED BY THE U.S. CONGRESS, WHICH
HAS VITAL BEARING ON THE IMMUNITIES AND PRIVILEGES OF
MEMBERS OF FOREIGN DIPLOMATIC MISSIONS, THE ATTENTION OF
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THE AMERICAN SIDE HAS ALREADY BEEN DRAWN TO THE FACT THAT
THE IMPLEMENTATION OF A NUMBER OF PARTS OF THIS LEGISLATION,
IF IT IS ADOPTED, WOULD GIVE RISE TO FRICTION AND EVEN SITU-
ATIONS OF CONFLICT IN GOVERNMENTAL RELATIONS. THE EXPLANA-
TIONS OFFERED BY THE STATE DEPARTMENT IN THIS CONNECTION
ONLY CONFIRM THE PROBABILITY OF SUCH CONSEQUENCES.
THE PROPOSITION CONTAINED IN THE PROPOSED LEGISLATION,

ACCORDING TO WHICH PERSONNEL OF DIPLOMATIC MISSIONS ON U.S. TERRITORY MUST--UPON BEING PRESENTED WITH LEGAL SUITS OR ACTION TAKEN AGAINST THEM IN A CIVIL OR CRIMINAL CASE--SUBSTANTIATE THEIR RIGHTS TO THE IMMUNITIES AND PRIVILEGES GENERALLY RECOGNIZED IN INTERNATIONAL DIPLOMATIC LAW, BY EACH TIME SUBMITTING STATEMENTS TO U.S. LEGAL OR ADMINISTRATIVE BODIES, CONSTITUTES A SUBSTANTIAL DEPARTURE FROM THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS, WHICH THE UNITED STATES UNDERTOOK TO HONOR WHEN IT BECAME A PARTICIPANT.

IT IS WELL KNOWN THAT THE RIGHT OF PERSONNEL OF DIPLOMATIC MISSIONS TO THE APPROPRIATE IMMUNITIES AND PRIVILEGES ORIGINATES FROM THE MOMENT OF THE ARRIVAL OF SUCH PERSONS ON THE TERRITORY OF THE STATE OF RESIDENCE, OR FROM THE MOMENT COMPETENT AUTHORITIES ARE INFORMED OF THE NOMINATION OF THESE PERSONS TO THE POSITIONS INDICATED (ARTICLE 39, P. 1 OF THE VIENNA CONVENTION). DEPARTURE FROM THIS PROPOSITION WOULD BE A VIOLATION OF THE CONVENTION AND WOULD CONTRADICT COMMONLY ACCEPTED PRACTICE WITH RESPECT TO PERSONS ENJOYING IMMUNITIES AND PRIVILEGES.

AS THE PRESENT TIME, THE PERSONNEL OF DIPLOMATIC MISSIONS OF THE SOVIET UNION IN THE U.S. AND OF THE UNITED STATES IN THE U.S.S.R., AS IS WELL-KNOWN, ENJOY EQUAL STATUS WITH RESPECT TO IMMUNITIES AND PRIVILEGES ON A BASIS OF RECIPROCITY, IN ACCORDANCE WITH PROVISIONS OF THE VIENNA CONVENTION OF 1961 ON DIPLOMATIC RELATIONS, IN ACCORDANCE WITH SOVIET-AMERICAN AGREEMENTS ON THIS SUBJECT, RELATING TO ADMINISTRATIVE-TECHNICAL

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AND SERVICE PERSONNEL AND MEMBERS OF THEIR FAMILIES, AND ARISING FROM PAST PRACTICE IN BILATERAL RELATIONS BETWEEN OUR TWO COUNTRIES.

IT IS VERY APPARENT THAT ADOPTION OF THE ABOVE-MENTIONED LEGISLATION AND ITS IMPLEMENTATION WOULD CREATE A SITUATION IN WHICH PERSONNEL OF SOVIET MISSIONS IN THE U.S. WOULD BE IN A SUBSTANTIALLY LESS FAVORABLE POSITION COMPARED TO THE PERSONNEL OF U.S. MISSIONS IN THE SOVIET UNION. SUCH A VIOLATION OF THE PRINCIPLE OF RECIPROCITY WOULD CONFRONT THE SOVIET UNION WITH THE NECESSITY OF CONSIDERING THE QUESTION OF CORRESPONDING RETALIATORY MEASURES, WITH ALL THE ENSUING CONSEQUENCES.

THE SOVIET SIDE EXPRESSES THE HOPE THAT THE AMERICAN SIDE WILL TREAT THIS APPEAL WITH ALL SERIOUSNESS AND WILL TAKE STEPS TO PREVENT THE IMPENDING LEGISLATION FROM REFLECTING UNFAVORABLY ON THE PRESENT STATUS OF PERSONNEL OF SOVIET DIPLOMATIC AND CONSULAR MISSIONS ON THE TERRITORY OF THE UNITED STATES. END QUOTE.

3. ISAKOV POINTED OUT THAT THE SOVIETS REMAIN UNASSUAGED BY THE DEPARTMENT'S NOVEMBER 1 PRESENTATION (REF A). HARBORING CONCERN AND APPREHENSION, THE SOVIETS ARE PRESENTING THEIR VIEWS NOW IN THE HOPE OF WORKING OUT PROBLEMS AMICABLY

"WITHOUT COMPLICATIONS". OTHERWISE, THE SOVIET SIDE WOULD BE COMPELLED TO TAKE REATLIATORY ACTIONS THE FULL RESPONSIBILITY FOR THE CONSEQUENCES OF WHICH WOULD BE BORNE BY THE U.S. SIDE. HE SPECIFICALLY STATED THAT THERE IS NO INTENTION TO INTERFERE IN THE INTERNAL LEGISLATIVE PROCESS OF THE U.S.: HOWEVER, THE SOVIET SIDE SERIOUSLY CONSIDERS THE DRAFT LEGISLATION TO BE IN CONFLICT WITH THE VIENNA CONVENTION, AND THAT SOME MEASURES SHOULD BE TAKEN TO VOID AN UNFAVORABLE IMPACT ON SOVIET DIPLOMATS IN THE U.S. IN THIS CONNECTION HE NOTED THAT THE PRESIDENT HAS AUTHORITY TO INCREASE OR DIMINISH IMMUNITIES AND PRIVILEGES OF FOREIGN (I.E., SOVIET) DIPLOMATS TO ACCORD THEM FULL RECIPROCITY WITH TREATMENT OF U.S. DIPLOMATS IN OTHER COUNTRIES (I.E., THE USSR). NOTING THAT THE SUBJECT WAS FRAUGHT WITH MANY TECHNICAL ISSUES WHICH CAUSE THE SOVIETS

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CONCERN, ISAKOV STATED THAT EMPHASIS OF THIS AIDE MEMOIRE WAS ON A BASIC POINT: THAT DIPLOMATIC PREVILEGES AND IMMUNITIES COMMENCE FROM THE MOMENT OF ARRIVAL BY PERSONNEL OF DIPLOMATIC MISSION OR FROM THE MOMENT OF NOTIFICATION BY COMPETENT AUTHORITIES OF THEIR DESIGNATION.

4. IN ACCEPTING THE AIDE MEMOIRE POLCOUNSELOR POINTED OUT THAT A) DRAFT LEGISLATION WAS NOT YET FINAL; B) THE U.S. SIDE FEELS THAT THE LEGISLATION IS CONSISTENT WITH THE VIENNA CONVENTION; C) THE LEGISLATION WAS NOT DIRECTED AGAINST THE SOVIET UNION AS A DISCRIMINATORY MEASURE BUT APPLIED TO ALL FOREIGN DIPLOMATS.

5. COMMENT: THE CLEAR MESSAGE WAS THAT A DIMINUTION OF THE STATUS OF SOVIET DIPLOMATS AND/OR "TECHNICAL PERSONNEL AND DEPENDENTS" WILL BE MET WITH RECIPROCAL MEASURES DIRECTED AGAINST CORRESPONDING U.S. PERSONNEL IN THE SOVIET UNION. ISAKOV'S REFERENCE TO THE PRESIDENT'S DISCRETIONARY POWERS SUGGESTS THAT ALTHOUGH THE SOVIETS WOULD PREFER THAT THE DRAFT LEGISLATION BE ALTERED THEIR FALLBACK POSITION WOULD COUNTENANCE A RESOLUTION OF THEIR CONCERNS BY PRESIDENTIAL ACTION.

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Message Attributes

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